

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LISA JOHNSON, by and through her
Conservator, Sharon Toth,

Plaintiff,

v.

ALAMEDA COUNTY MEDICAL CENTER; SCOTT
ZELLER, M.D.; KURT BIEHL, M.D.;
JEANETTE COTANCHE, R.N.; LEONI
ALFONSO, R.N.; MADELYNE MARKLE, R.N.;
AND CEDRICK FROWNER,

Defendants.

No. C 07-3395 CW

ORDER SETTING NEW
DEADLINE FOR
ADDITIONAL OPPOSITION

Defendants Alameda County Medical Center (ACMC), Scott Zeller,
M.D., Kurt Biehl, M.D., Jeanette Cotanche, R.N., Leoni Alfonso,
R.N. and Madelyne Markle, R.N. move for summary judgment or, in the
alternative, for partial summary judgment on any or all of
Plaintiff Lisa Johnson's claims against them. Plaintiff opposes
the motion.

The matter was heard on June 25, 2009. Plaintiff was given
one week to accept summary adjudication of her civil rights claims
and remand of her negligence claim against ACMC to state court, or
to file a concise legal memo pointing to actual evidence of
wrongdoing specific to each individual and to a policy on the part
of ACMC which could support a civil rights claim. Docket No. 64.

1 The Court also indicated Plaintiff could address her claim that she
2 was thwarted from conducting discovery. On July 2, 2009, Plaintiff
3 filed a "Notice of Agreement to Remand," stating that the parties
4 had agreed to remand the case to state court "with the proviso that
5 reasonable mutual discovery can be conducted." Docket No. 65.
6 Defendants object to Plaintiff's notice on the grounds that it
7 misrepresented that the parties' counsel had entered into an
8 agreement or stipulation. In particular, Defendants object to
9 continued discovery and ask the Court to rule on the summary
10 judgment motion upon the submitted evidence. Docket No. 66.
11 Plaintiff's reply states that Defendants agreed to further mutual
12 discovery in state court if Plaintiff agreed to remand, and that
13 her decision to agree to remand was a strategic decision based in
14 part on this understanding. However, Plaintiff submits no evidence
15 supporting such an agreement between counsel. Docket No. 67.

16 Plaintiff did not file any additional authority or evidence in
17 opposition to summary judgment on her civil rights claim, and
18 Plaintiff has not shown how she has been thwarted from conducting
19 proper discovery. Under Rule 56(f) of the Federal Rules of Civil
20 Procedure, if Plaintiff can show by affidavit that, for specified
21 reasons, she cannot present facts essential to justify her
22 opposition, the Court may order a continuance to enable discovery
23 to be undertaken. "[T]he party seeking a continuance bears the
24 burden to show what specific facts it hopes to discover that will
25 raise an issue of material fact. The mere hope that further
26 evidence may develop prior to trial is an insufficient basis for a
27 continuance under Fed. R. Civ. P. 56(f)." Continental Maritime of
28 San Francisco v. Pacific Coast Metal Trades Dist. Council, Metal

1 Trades Dep't, AFL-CIO, 817 F.2d 1391, 1395 (9th Cir. 1987)
2 (internal citation omitted). To obtain a continuance, the party
3 opposing the summary judgment motion must make clear not only what
4 information is sought, but also how that information "would
5 preclude summary judgment." Margolis v. Ryan, 140 F.3d 850, 853
6 (9th Cir. 1998).

7 The Court will give Plaintiff an additional week from the date
8 of this order to file an additional opposition to Defendants'
9 motion for summary judgment, and to state any grounds for a
10 continuance pursuant to Rule 56(f) of the Federal Rules of Civil
11 Procedure. Plaintiff should state, specifically, the information
12 sought through continued discovery, how that information would
13 preclude summary judgment, and why discovery wasn't taken, given
14 that the discovery cutoff has passed. If Plaintiff files an
15 opposition, Defendants will have one week to file a reply. If
16 Plaintiff does not file any additional opposition, the Court will
17 rule on the summary judgment motion.

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19 IT IS SO ORDERED.

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21 Dated: 7/13/09

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23 CLAUDIA WILKEN
24 United States District Judge
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